

NICHOLAS A. TRUTANICH  
United States Attorney  
District of Nevada

MARCELO ILLARMO, MABN 670079  
Special Assistant United States Attorney  
160 Spear Street, Suite 800  
San Francisco, California 94105  
Telephone: (415) 977-8944  
Facsimile: (415) 744-0134  
E-Mail: marcelo.illarmo@ssa.gov

Attorneys for Defendant

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JEROME W. PEPMUELLER, Jr.,

Plaintiff,

v.

ANDREW SAUL,  
Commissioner of Social Security,

Defendant.

Case No.: 2:20-cv-01694-EJY

UNOPPOSED MOTION FOR EXTENSION  
OF TIME (SECOND REQUEST)

Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through his undersigned attorneys, hereby moves for a 62-day extension of time to file Defendant’s Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint. Defendant’s Electronic Certified Administrative Record and Answer to Plaintiff’s Complaint are due to be filed by January 22, 2021.

Defendant makes this request in good faith and for good cause, because the CAR, which must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The public health emergency pandemic caused by COVID-19 has significantly impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in Falls Church,

1 Virginia, which is responsible for producing the CAR that must be filed with the Answer, per 42  
2 U.S.C. §§ 405(g) and (h). Prior to the COVID-19 pandemic, to safeguard Personally Identifiable  
3 Information (PII), all hearing recordings, which are part of the administrative record, were  
4 downloaded onto compact discs and encrypted. OAO securely routed the encrypted discs to a  
5 private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in  
6 Falls Church, Virginia. The private contractor would transcribe the hearing recording and send the  
7 paper copy of the hearing transcript back to OAO. OAO personnel would then scan the hearing  
8 transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter,  
9 OAO personnel would assemble the administrative record in a prescribed order. After the advent of  
10 COVID-19, the Agency has taken a number of concrete steps to transition its years-old in person  
11 CAR preparation process to a fully virtual one.

12 OAO has been actively pursuing mitigation efforts to allow the remote preparation of  
13 administrative records to ensure a continuity of operations. For cases in which the private  
14 contractors were already in possession of hearing recordings for transcription, with the assistance of  
15 the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts  
16 from the private contractors via secured email, e.g., using password protection and redacted Social  
17 Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private  
18 contractors via secured email.

19 For cases in which OAO had not yet submitted recordings to the private contractors before  
20 March 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these  
21 cases. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the  
22 contractors for transcription. Through the month of May, OAO and the contractors worked to  
23 resolve technical issues that arose, particularly with large files.

24 As detailed in the attached declarations from Jebby Rasputnis, Executive Director of the  
25 OAO, the Commissioner has redesigned its business process to allow for virtual CAR production,  
26 including adopting new technology, retraining staff, modifying blanket purchase agreements with  
transcription services, and adding two more transcription vendors. In addition to the changes made

1 by the Commissioner, the agency's transcription vendors are also modifying their business  
2 operations to help provide virtual services. As a result, the agency was able to process 1,372 cases  
3 in September, 2,115 cases in October, and 1,709 cases in November. OAO must still navigate and  
4 overcome significant challenges: (1) a backlog of nearly 10,200 cases, (2) challenges in prioritizing  
5 older cases using the new process, and (3) the capacity of the contracted transcription services.

6 OAO is trying to prioritize CAR preparation based on objective factors, such as filing date,  
7 and is working diligently to address the backlog of CARS. Out of fairness to all social security  
8 claimants, Defendant respectfully requests that the Court defer to OAO's prioritization of cases for  
9 CAR preparation and maintain consistency in the length of extensions granted in social security  
10 cases, absent a showing of exceptional circumstances. Counsel for Defendant further states that the  
11 Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is  
12 committed to filing Answers promptly upon receipt and review of the administrative records.

13 Given the volume of pending cases, Defendant requests an extension in which to respond to  
14 the Complaint until March 23, 2021. If Defendant is unable to produce the certified administrative  
15 record necessary to file an Answer in accordance with this Order, Defendant shall request an  
16 additional extension prior to the due date.

17 The undersigned affirms that opposing counsel does not object to the requested extension.  
18  
19  
20  
21  
22  
23  
24  
25  
26

1 WHEREFORE, the Defendant asks the Court to enlarge the time for filing the Electronic  
2 Certified Administrative Record and Answer to Plaintiff's Complaint until March 23, 2021.

3  
4 Dated: January 19, 2021

5 Respectfully submitted

6 NICHOLAS A. TRUTANICH  
7 United States Attorney

8 /s/ Marcelo Illarmo  
9 MARCELO ILLARMO  
Special Assistant United States Attorney

10 IT IS SO ORDERED:

11  
12   
13 UNITED STATES MAGISTRATE JUDGE  
14

15 DATED: January 19, 2021  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26